



# **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100699/2019**

**Held in Glasgow on 29 April 2019**

**Employment Judge: Robert Gall**

**Miss H Truesdale**

**Claimant  
In Person**

**Ace Resurfacing**

**Respondent  
Not present and  
Not represented**

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the hearing on 29 April 2019 is adjourned in circumstances where the Tribunal, on the application of the claimant, adds two further respondents. The second respondent is Gordon Quate, Office 2, Upper Floor, 8/10 Glasgow Road, Kirkintilloch, Glasgow G66 1SH. The third respondent is Q & H Construction Limited, having its registered office at 272 Bath Street Glasgow G2 4JR. The claim is to be served upon Mr Quate as the second respondent and Q & H Construction Limited as third respondent.

## **REASONS**

1. This case called for hearing at Glasgow on 29 April 2019. The claimant was present as was a witness on her behalf. She had prepared productions and came with those.
2. The history to this claim is set out in a Judgment prepared following a hearing held on 10 April 2019. The Judgment of the Tribunal following that hearing was dated and issued to parties on 10 April 2019.
3. The claim has been served upon the current respondents, Ace Resurfacing Ltd. That entity had not submitted form ET3 within the time period permitted for that to occur. What

had been scheduled as a case management Preliminary Hearing on 10 April 2019 was then converted in those circumstances to become a hearing.

4. The respondents had then submitted form ET3 outwith the time permitted for that to occur. No extension of time was sought in terms of Rule 20 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. In terms of rule 18, form ET3 was rejected in that circumstance. Under the Rules, Form ET3 is in those circumstances to be returned to the respondent, having been rejected.

5. When the case called for hearing on 10 April the 14 day period provided under Rule 19 during which an application for reconsideration of the rejection of form ET3 may be made in terms of Rule 18 had not elapsed. The respondents appeared at the hearing although there was no basis on which they could take part in the hearing on the merits given that no form ET3 had been validly submitted. Mr Quate, a director and it is understood the owner of the respondent company, was the person who appeared. He stated that he had instructed a solicitor to apply for reconsideration of rejection of form ET3.

6. The time for applying for reconsideration of the rejection of form ET3 had not therefore elapsed. Mr Quate was present at the PH. He stated that he would be instructing a solicitor to seek reconsideration. There was therefore the possibility that reconsideration would be sought within the time limit permitted for that. The potential therefore existed that reconsideration would then be undertaken and form ET3 permitted to be lodged. That would then lead to the claim being defended. It did not therefore seem appropriate to me to proceed with the hearing on 10 April.

7. A fresh hearing date was therefore set for 29 April at 2 PM. Appropriate hearing notices were issued to parties. Email correspondence between Mr Quate and the Tribunal and the claimant and the Tribunal took place in the lead up to the hearing on 29 April.

8. In course of the email correspondence with the Tribunal, Mr Quate set out why it was that he said the response form had been presented late. He did not however seek reconsideration of its rejection. He also did not send to the Tribunal a copy of form ET3 which he proposed be accepted as the response form. This correspondence explaining why the form initially submitted was submitted late came from Mr Quate rather than from a solicitor. It stated that the claim form had been sent to an incorrect address. That address had been supplied by the claimant in the claim form. The claimant replied to the information in this email stating that the address for the respondents which she had stated in the claim form was that shown on Companies' House records as the registered office of the respondents. The registered office of the respondents had been altered with effect from 15 April 2019. Prior to that date, the registered office of the respondents was the address specified by the claimant for service of claim.

9. It seemed to me that the explanation given in writing by Mr Quate was unsatisfactory. The address supplied by the claimant and the claim form and the address therefore where the claimant been served, was the registered office of the respondents at time of service of the claim. However, even if the email from Mr Quate was considered to be an application for reconsideration of rejection of form ET3, it did not enclose a proposed form ET3. There was therefore no form ET3 which could be accepted if the application for reconsideration of the initial rejection of form ET3 was successful.

10. On 29 April Mr Quate was not present at Tribunal at time of the hearing. There was no representative present. That remained the position at 2.15 and was also the position when the case hearing drew to a close around 4pm. In the absence of further clarification as to the basis said to exist for reconsideration of rejection form ET3, and in the absence of a proposed form ET3 from the respondents, I concluded that the application for

reconsideration of rejection of form ET3 could not be granted. The hearing therefore proceeded.

11. I commenced to hear evidence from Ms Truesdale. It became apparent that any connection between her and the respondents could only have commenced at time when the respondents came into being which was on 14 November 2018 when the respondents were incorporated. Elements of the behaviour complained of by the claimant occurred prior to that time. Those events involved Mr Quate. At that point the claimant was employed by Q & H Construction Ltd.

12. At present therefore, the claim is directed against the respondents as a limited company. In terms of Sections 109 and 110 of the Equality Act 2010, individual employees can be subject to a claim where they are said to have been perpetrators of discriminatory acts, in addition to the employer being potentially liable.

13. It was clear to me from evidence given by the claimant that the alleged discriminatory conduct involved actings of Mr Quate at the time when the entity involved was Q & H Construction Ltd, as well as actings of Mr Quate at the time when the entity involved was the current respondents, Ace Resurfacing Ltd.

14. In terms of Rule 34, a party can be added to a claim *“if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings”*.

15. The claimant confirmed that she now appreciated that her case was that the perpetrator of the acts was Mr Quate, whether at time of her employment with Q & H Construction Ltd or at time of what she says was employment with Act Resurfacing Ltd, that latter entity being the current respondents.

16. In those circumstances I was persuaded that it was appropriate to allow amendment of the claimant to include as respondents Q & H Construction Ltd and Mr Quate as an individual, in those circumstances the claim requires to be served upon those parties to provide them with an opportunity to defend the claim. The claimant understood this and confirmed she was asking the Tribunal to bring in those parties as respondents.

17. The Clerk to the Tribunals is requested to add both Q & H Construction Ltd and Mr Quate as respondents. The Clerk to the Tribunals is requested to serve the claim upon those parties, setting down a case management Preliminary Hearing with the usual agenda in circumstances where a claim of discrimination is made and such a PH is set down.

18. I mentioned to the claimant that it appeared to me that the terms of Rule 50 are likely to apply given the allegations of sexual misconduct made. It may be that a Restricted Reporting Order is made. It may also be appropriate to anonymise the parties in the claim, being the claimant and, as it has now become, all 3 respondents. That is a matter which can be considered at the case management Preliminary Hearing.

19. The hearing ceased at this point given the addition of Mr Quate and Q & H Construction Ltd as respondents in the case.

**Employment Judge: Robert Gall**  
**Date of Judgment: 30 April 2019**  
**Entered in register: 03 May 2019**  
**and copied to parties**

**E.T. Z4 (WR)**